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August 26, 2022

VIA ECF

The Honorable Denise L. Cote
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Ad Hoc Group of Unsecured Claimants v. LATAM Airlines Group S.A., et al.*, Case No. 22-cv-5660

Dear Judge Cote:

We write on behalf of appellees LATAM Airlines Group S.A. and its affiliated debtors and debtors-in-possession (collectively, "Appellees") to respond briefly to the letter filed today by the appellant Ad Hoc Group of Unsecured Creditors ("Appellant") asserting that it preserved certain arguments for appellate review.

Appellant continues to blend two separate issues—one that it raised and lost, and one that it never raised. In the Bankruptcy Court, Appellant argued that the equal-treatment requirement of Section 1123(a)(4) was violated because the direct allocation and backstop fees were actually consideration for the Commitment Creditors' unsecured claims, not their backstop commitments. *See* A008754-A008756; A000873-A000876. The Bankruptcy Court rejected this argument, finding as a matter of fact that this consideration "is not based on [the Commitment Creditors'] status as Holders of Allowed General Unsecured Class 5 Claims; it is in consideration for their commitments described in the Commitment Creditors Backstop Agreement." *See* A020739-A020742.

In its appellate briefs and at argument today, Appellant has advanced an entirely different argument: that the mere *mechanism* of the direct allocation violates Section 1123(a)(4).

See Appellant's Reply Brief at 8, ECF No. 76. This cannot be found in any of Appellant's submissions to the Bankruptcy Court;[1] Appellant did not present this argument when it objected to the Disclosure Statement, *see* A000861-A000890, when it objected to the Backstop Motion, *see* A001245-A001564, or when it objected to Confirmation, *see* A008741-A008926.[2] Indeed, contrary to Appellant's assertion that "the bankruptcy court squarely addressed Appellant's claims-exchange argument," the cited passage from the confirmation hearing transcript clearly establishes the precise opposite—that the Court was rejecting Appellant's argument described in the preceding paragraph when it noted that the claims-exchange process was just "the mechanism through which Class C Notes are obtained." A020742. Had Appellant actually challenged the *mechanism* itself, the Bankruptcy Court logically would not have responded with nothing other than that it was just the mechanism. This is further confirmed in the passage of the Confirmation Order cited by Appellant. *See* A002862 (describing Appellant's Section 1123(a)(4) objection alleging that the Commitment Creditors "will receive more favorable treatment than other unsecured creditors by virtue of (i) the allocation of New Convertible Notes Class C comprising the Direct Allocation, plus (ii) the backstop payment."). This had nothing to do with the mechanism of the exchange, but was simply Appellant's argument that the direct allocation and cash fee were not consideration for the backstop but rather were on account of their claims, which the Bankruptcy Court repeatedly rejected.

Appellant's own letter thus confirms that none of Appellant's briefs to the Bankruptcy Court ever challenged the *mechanism* of the direct allocation, or set forth the arguments contained, *inter alia*, at page 8 of Appellant's reply brief to this Court (arguing that the Commitment Creditors are receiving more than their pro rata share of the Class C Notes left after the direct allocation specifically because of the mechanics of the direct allocation).

Thank you for your consideration.

Respectfully submitted,

/s/ Jeffrey A. Rosenthal
Jeffrey A. Rosenthal

Attorney for Appellees

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[1] Nor was it ever raised in Appellant's appeal to Judge Furman. *See* Appellants' Brief, *In re LATAM Airlines Grp. S.A.*, No. 22-CV-2556 (May 3, 2022), ECF No. 46.

[2] Appellant's citation to A001255 n.12 in its letter is the *only* place in its backstop objection where it even claims to have challenged the mechanism, which underscores the extent to which it grasps at straws. This footnote is in the "relevant factual background"; not only does Appellant never offer any argument on this issue—or indicate that it is even referring to the *mechanism*—but, if anything, Appellant's position is the converse of the one it now takes. Footnote 12 indicates that a Section 1123(a)(4) issue only arises if "the Debtors contend that the Direct Allocation Amount is part of the consideration Commitment Creditors will receive on account of their claims under the Plan." On the other hand, according to Appellant, if the "Direct Allocation Amount is consideration the Commitment Creditors are receiving for their obligations under the Commitment Creditors Backstop Agreement"—which *is* both the Debtors' position and what the Bankruptcy Court found—then Appellant contended Section 1129(a)(4) was implicated, not Section 1123(a)(4).